

### REMARKS

Applicant has carefully reviewed the Office Action of March 25, 2005 and offers the following remarks to accompany the above amendments.

Initially, Applicant amends claim 5 to correct a typographical error. No new matter is added.

#### **35 U.S.C. § 101**

Claims 1-7 and 14-24 were rejected under 35 U.S.C. § 101 for claiming non-statutory subject matter. Specifically, the Patent Office states that the claiming of the human body or parts of the human body is non-statutory and alleges that the claims claim the human body through the use of the word customer. Applicant respectfully disagrees.

Applicant notes that the "customer" is not a part of the fuel dispensing system of claims 1, 5, or 7, nor is the "customer" part of the integrated robotic fueling facility of claim 14. Rather, in each instance, the claims recite an element that is adapted to interact with the customer in a particular manner (e.g., a fuel dispenser adapted to receive payment from a customer (claims 1 and 5), a system controller configured to produce an accounting of a transaction associated with a fuel dispenser a customer (claim 7), and means for accepting payment from a customer (claim 14)). None of the claims require the customer to be part of the system. As such, Applicant is not claiming a human body or human body part and the rejection is unwarranted.

Applicant further notes that this sort of use of customer is well accepted in claim drafting practice. A quick search of the USPTO website on August 11, 2005 shows that 6489 patents use the word customer in the claims. An exemplary claim from U.S. Patent No. 6,928,157 reads as follows:

1. An automated calling system, for allowing an operator to place a series of telephone calls to a plurality of customers, wherein the operator uses a telephony device to communicate with customers, the calling system comprising:
  - a switching device connected to a public switched telephone network, wherein the switching device is configured to selectively connect the operator's telephony device to one of a plurality of telephone lines; and
  - a processor coupled to and controlling the switching device, wherein the processor is configured to:
    - (a) automatically place a telephone call to a *customer* using a telephone line, and to cause the switching device to connect the operator's telephony device to the telephone line as the telephone call is being placed, in response to an operator's command selecting the *customer*;

(b) automatically place a new telephone call to a new *customer* using a new telephone line, and to cause the switching device to connect the operator's telephony device to the new telephone line as the new telephone call is being placed, in response to an operator's command selecting the new *customer*, and

(c) repeat (a) and (b) to allow the operator to place a series of telephone calls to a plurality of customers;

wherein the operator can listen as the calls are placed so that the operator can immediately talk to a *customer if the customer* answers a call.

Numerous other examples exist. While Applicant is cognizant that the decisions of other examiners are not binding in the current application, the widespread use of the term *customer* in so many issued patents is strong evidence that this sort of claim drafting is permissible and within the scope of the statute. Applicant requests reconsideration of the § 101 rejection of claims 1-7 and 14-24 at this time.

### 35 U.S.C. § 112

Claims 13, 23, and 24 were rejected under 35 U.S.C. § 112, second paragraph for being indefinite. Applicant has amended the claims to clarify the intended nature of the subject matter. No new matter is added.

With respect to claim 13, the word "data" has been deleted, leaving just "transaction accounting", which has appropriate antecedent basis. Applicant requests withdrawal of the § 112 rejection of claim 13 at this time.

With respect to claim 23, Applicant has inserted a "the" so that it is clear that the at least one fuel dispenser refers to the at least one fuel dispenser of claim 5. Applicant requests withdrawal of the § 112 rejection of claim 23 at this time.

With respect to claim 24, Applicant has amended the claim to clarify that the indicia is input at least in part by positioning the vehicle proximate the transaction delivery station. This clarifies how the customer receives the transaction accounting. Applicant requests withdrawal of the § 112 rejection of claim 24 at this time.

### 35 U.S.C. § 102(e)

Claims 7, 14, 15, 19, and 20 were rejected under 35 U.S.C. § 102(e) as being anticipated by Nusbaumer et al. (hereinafter "Nusbaumer"). Applicant respectfully traverses. For the Patent

Office to establish anticipation, the Patent Office must show where each and every element of the claim is taught in the reference. Further, the elements of the reference must be arranged as claimed. MPEP § 2131.

Applicant herein amends claim 7 to depend from allowable claim 1. Claim 7 should now be in condition for allowance.

Claim 14 has been amended to recite that the customer to whom the transaction accounting is delivered is the customer associated with the vehicle. No new matter is added.

Claim 14 is further amended to recite

wherein a transaction accounting is optionally delivered to the customer associated with the vehicle if the customer associated with the vehicle is identified at said transaction accounting dispensing facility through indicia provided to the customer at one of the plurality of fuel dispensing stations upon completion of dispensing fuel into the customer's vehicle, the transaction accounting data being transferred from said control and transaction processing unit.

Nusbaumer does not teach or suggest that the transaction accounting is delivered to the customer in response to the customer providing indicia that the customer received at the end of the fueling transaction. Specifically, the print outs at element 150 of Nusbaumer do not occur in response to the customer provision of the indicia. As such, Nusbaumer does not anticipate the claim.

Claims 15, 19, and 20 depend from claim 14 and are not anticipated at least for the same reason. Applicant requests withdrawal of the § 102 rejection of claims 14, 15, 19, and 20 at this time.

### 35 U.S.C. § 103

Claims 16-18 were rejected under 35 U.S.C. § 103 as being unpatentable over Nusbaumer. Applicant respectfully traverses. For the Patent Office to establish *prima facie* obviousness, the Patent Office must show where each and every element of the claim is taught or suggested in the references of record. MPEP § 2143.03. If the Patent Office cannot establish obviousness, then the claims are allowable. Furthermore, if the Patent Office is relying on a single, modified reference, then to modify the reference, the Patent Office must do two things. First, the Patent Office must articulate some motivation to modify the reference, and second, the Patent Office must provide actual evidence to support the motivation to modify the reference. *In re Kotzab*, 217 F.3d 1365, 1370 (Fed. Cir. 2000).

Applicant initially notes that the Patent Office has not provided the evidence required by the Federal Circuit to modify Nusbaumer. Specifically, the Patent Office admits that Nusbaumer alone does not teach or suggest the invention claimed in claims 16-18. The Patent Office says that it would be obvious to modify Nusbaumer "to prevent fraudulent use by non-authorized users of the system." This asserted motivation lacks the requisite evidence. Since the motivation lacks the requisite evidence, the motivation is improper. Since the motivation is improper, the modification to Nusbaumer is improper. Since the modification to Nusbaumer is improper, the rejection based on the modified Nusbaumer is improper. Applicant requests withdrawal of the § 103 rejection on this basis.

Applicant further traverses the rejection because the modified Nusbaumer does not teach or suggest that a transaction accounting is optionally delivered to the customer associated with the vehicle if the customer associated with the vehicle is identified at said transaction accounting dispensing facility through indicia provided to the customer at one of the plurality of fuel dispensing stations upon completion of dispensing fuel into the customer's vehicle, the transaction accounting data being transferred from said control and transaction processing unit as recited in claim 14. Since the modified reference does not teach or suggest the claim element, the modified reference does not establish obviousness. Applicant requests withdrawal of the § 103 rejection of claims 16-18 at this time on this basis as well.

Applicant requests reconsideration of the rejections in light of the remarks and amendments presented herein. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

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